

FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 14, 2008

**BY FACSIMILE AND U.S. MAIL**

Trevor Potter, Esq.  
Caplin & Drysdale  
One Thomas Circle, N.W.  
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Washington, DC 20005

Scott E. Thomas, Esq.  
Dickstein Shapiro LLP  
1825 Eye Street, N.W.  
Washington, DC 20006

RE: MURs 5712 and 5799  
Senator John McCain

Dear Messrs. Potter and Thomas:

I am writing to inform you that the Federal Election Commission would like to offer your client the opportunity to appear in a supplemental probable cause hearing for the above referenced matters. As you may know, in June 2008, the U.S. Senate confirmed a new group of Commissioners to serve on the Commission. Because these new Commissioners were unable to participate in the original probable cause hearing for these matters, which took place on October 24, 2007, at least two Commissioners have expressed an interest in holding a supplemental hearing. Please be advised that holding a supplemental probable cause hearing is completely voluntary, and no negative inference will be drawn if your client chooses not to participate in such a hearing.

The Commission would appreciate your response to this offer by November 24, 2008.

If you agree to participate in a supplemental probable cause hearing, the hearing procedures will be the same as in a standard hearing. The hearing will begin with the Chairman making a brief statement regarding the purpose of the hearing. You will be allowed twenty minutes for your statements, which you may divide between an opening statement and a closing

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statement. You should inform the Chairman at the beginning of the hearing how much time you would like to reserve, if any, for a closing statement.

Your statement should present issues and arguments that you have already briefed or brought to the attention of the Office of General Counsel ("OGC"). Absent a request by a Commissioner at the hearing, or intervening events subsequent to the filing of your reply brief, you may only present issues and arguments at the hearing that were raised in your reply brief or at the previous probable cause hearing. After you have made your opening statement, each Commissioner will have the opportunity to ask questions. Neither questioners nor respondents are time limited.

You should notify OGC at least one week prior to the scheduled date of the hearing if you intend to use additional charts, handouts or audio-visual aids during your presentation to the Commission.

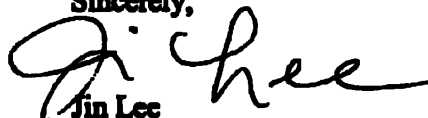
Please produce at least twelve copies of any written materials you intend to present to the Commission at the hearing. Finally, witnesses, including any respondent, co-respondent or third-party witness, may not be called to testify at the probable cause hearing. Following your presentation, you may be questioned by individual Commissioners, the General Counsel, and the Staff Director.

The Commission may request at the hearing that you submit supplementary information or brief additional issues. To the extent that the Commission requests such information or briefing, you will have ten days after the hearing to submit these materials, unless the Commission imposes a different deadline for the submission.

A transcript will be made of the hearing and respondents may be bound by any representations made by you at the hearing. You may request a copy of the transcript by submitting a written request to OGC. Upon the receipt of a written request, OGC will authorize the court reporter to allow you to purchase a copy of the transcript. The Commission may rely on the contents of the transcript in its consideration of whether to find probable cause to believe that a violation has occurred or in any subsequent action.

If you have any questions, please feel free to contact me at (202) 694-1650.

Sincerely,

  
Jin Lee  
Attorney

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